



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

The Honorable John Conyers, Jr.
Ranking Member, Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515-6216

NOV 10 2003

Dear Congressman Conyers:

This is in response to your letter of March 24, 2003, requesting that the Inspector General "immediately open an investigation into allegations of conflict of interest and other misconduct involving Richard N. Perle, Chairman of the Pentagon's Defense Policy Board."

We have completed our inquiry regarding the conduct of Mr. Perle and did not substantiate allegations of misconduct.

b7c [REDACTED]

A copy of our report, which has been redacted to remove certain information protected under the Freedom of Information Act (FOIA), is enclosed. However, because the information in this letter and the enclosed report may be exempt from public release, it remains designated "FOR OFFICIAL USE ONLY." We ask that you coordinate any additional releases with the FOIA/Privacy Act Office, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, Virginia 22202-4704.

By separate correspondence we provided Congressman Vic Snyder, Senator Carl Levin, and Senator Jack Reed the results of our inquiry. Please contact me or Mr. John R. Crane, Director, Office of Communications and Congressional Liaison, at (703) 604-8324, if you have any questions.

Sincerely,


Joseph E. Schmitz

Enclosure:
As stated

cc: The Honorable F. James Sensenbrenner, Jr.
Chairman

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DEPARTMENT OF DEFENSE OFFICE OF THE INSPECTOR GENERAL

CASE NUMBER
H03L87509069

NOV 10 2003



ALLEGED CONFLICT OF INTEREST AND MISUSE OF PUBLIC OFFICE:
MR. RICHARD N. PERLE, FORMER CHAIRMAN
DEFENSE POLICY BOARD ADVISORY COMMITTEE

~~This document contains information~~
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~~the FOIA. Exemptions 5, 6 and 7c applies.~~

Prepared by Directorate for Investigations of Senior Officials
Office of Deputy Inspector General for Investigations

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NOV 10 2003

ALLEGED CONFLICTS OF INTEREST AND MISUSE OF PUBLIC OFFICE:
MR. RICHARD N. PERLE, FORMER CHAIRMAN,
DEFENSE POLICY BOARD ADVISORY COMMITTEE

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that Mr. Richard N. Perle, former Chairman, Defense Policy Board Advisory Committee (DPBAC), [REDACTED]

As set forth below, [REDACTED]

This report sets forth our findings and conclusions with respect to the following allegations that we formulated based on complaints made to this Office concerning Mr. Perle's outside activities while he served as Chairman, DPBAC:

- [REDACTED]
- [REDACTED]

¹ Mr. Perle resigned as the Chairman, DPBAC, on March 26, 2003, but he remained a DPBAC member.

² An SGE is defined under Title 18, United States Code, Section 202 (18 U.S.C. 202) as "an officer or employee . . . who is retained, designated, appointed, or employed" by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Ethics standards that apply to SGEs are less restrictive than those that apply to regular Government employees.

³ In brief, both 18 U.S.C. 203 and 205 restrict a Government employee from providing representational services as an attorney or agent before Government entities on "a particular matter involving a specific party or parties." However, in the case of SGEs, the statutory prohibitions apply only to a particular matter in which the SGE participated personally and substantially while serving as a Government employee or a particular matter that was pending in an agency where the SGE served more than 60 days during the preceding 365-day period. [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

With few exceptions, we confirmed that Mr. Perle engaged in the outside activities that were attributed to him. That is, he sought compensation for representing [REDACTED]

[REDACTED]

⁴ In brief, 18 U.S.C. 208(a), the main conflict of interest statute, prohibits an SGE from participating personally and substantially in any particular matter that could affect the financial interests of the SGE, the SGE's spouse, minor child, general partner, an organization in which the SGE serves as an officer, director, trustee, general partner, or employee, or an organization with which the SGE is negotiating or with which the SGE has an arrangement for prospective employment.

⁵ Section 2635.702 of DoD 5500-7R, "Joint Ethics Regulation (JER)," prohibits an employee from using his public office for his own private gain or the private gain of others.

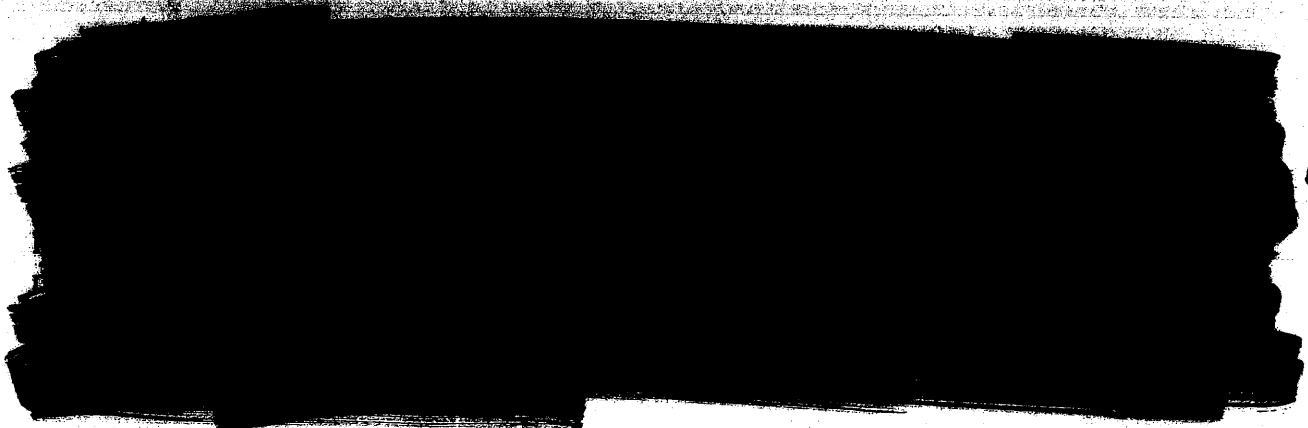
Government; and he participated in an investment seminar sponsored by Goldman Sachs. However, we did not substantiate allegations that his activities in that regard violated applicable standards based on the following findings of fact:

- One of the key elements of a violation under applicable provisions of Title 18 participation as a Government official in a particular matter that involved the outside party -- was not satisfied. That is, we found no evidence that Mr. Perle's DPBAC activities ever involved a "particular matter" concerning any of the parties with whom Mr. Perle was associated in his private capacity. Our interviews with DPBAC members and reviews of meeting minutes found no indication that DPBAC discussions ever mentioned particular matters involving Global Crossing, Autonomy, Trireme, Loral, or Goldman Sachs.
- Mr. Perle arguably represented Global Crossing and Loral in a "particular matter . . . which is pending in the department or agency of the Government in which such employee is serving" -- thereby satisfying the alternate "particular matter" criteria of 18 U.S.C. sections 203 and 205. However, that provision is applicable only to an SGE who "has served the government for more than 60 days during the immediately preceding period of 365 consecutive days." As chairman of the DPBAC, Mr. Perle served approximately 8 days per year -- far less than the 60 days that would trigger provisions of 18 U.S.C. 203 and 205 regarding "a particular matter . . . pending in the department or agency of the Government in which such employee is serving."
- We confirmed that Mr. Perle signed an affidavit, for possible submission to the Global Crossing bankruptcy court, that claimed his position as DPBAC Chairman gave him "a unique perspective on and intimate knowledge of national defense and security issues." On its face, the affidavit would appear to violate DoD ethics regulations that prohibit the use of official position for personal gain. However, testimony from multiple witnesses corroborated Mr. Perle's assertion that he objected to the language at issue and signed a second version of the affidavit only after being incorrectly assured that the language referring to his DPBAC position had been removed. Accordingly, we considered his act, while careless, an unintentional oversight. Because the affidavit was never submitted in court and because Mr. Perle was never employed or compensated by Global Crossing, we considered the oversight of minimal consequence.
- We confirmed that Mr. Perle met with Saudi Arabian businessmen at a luncheon in Marseilles, France, in January 3, 2003, but we determined that his discussions at the luncheon made no reference to Trireme and did not include the alleged *quid pro quo* offer.
- We confirmed that Mr. Perle contacted a State Department official on behalf of Loral, but that he did so in his private capacity and did not mention or invoke his DPBAC status. Therefore, he did not misuse his position by making that contact.

- We confirmed that Mr. Perle participated in a telephone conference call with investors as a paid consultant of Goldman, Sachs. However, his contribution to the conference consisted of general commentary on the world situation, based on information available in the public domain, and did not include information acquired by virtue of his position on the DPBAC. Accordingly, he did not improperly use nonpublic information and was not prohibited from receiving compensation because the discussions did not relate to his official duties.

Finally, we examined the more elusive issue of whether Mr. Perle's activities with respect to outside entities created the appearance that he was violating conflict of interest statutes or DoD ethics regulations.⁶ In that regard, we concluded that Mr. Perle activities did not create such an appearance within the meaning of the JER -- "from the perspective of a reasonable person with knowledge of the relevant facts." In this case the "relevant facts" include the rules that apply to SGEs, the nature of Mr. Perle's DPBAC activities *vis-à-vis* his outside activities, and a recognition that membership on the DPBAC, per its charter, consists of "private sector individuals with distinguished backgrounds in national security affairs." In view of those relevant facts, which are set forth in greater detail below, we found insufficient basis to conclude that Mr. Perle created the appearance of impropriety from the perspective of a reasonable person.

Because this investigation did not find "reasonable grounds to believe there has been a violation of Federal criminal law," we concluded that the matter did not warrant notification to the Attorney General under Section 4(d) of the IG Act.⁷



This report sets forth our findings and conclusions based on a preponderance of the evidence.

⁶ Section 2635.101 of the JER states, "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards." Whether such actions create such an appearance "shall be determined from the perspective a reasonable person with knowledge of the relevant facts."

⁷ Section 4(d) states: "In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law."

II. BACKGROUND

The DPBAC serves the public interest by providing the Secretary of Defense, Deputy Secretary of Defense, and Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of Defense policy. The DPBAC focuses on long-term, enduring issues central to strategic planning for the Department of Defense and is responsible for research and analysis of topics addressed to it by the Secretary of Defense, Deputy Secretary of Defense, and Under Secretary of Defense for Policy.

Individual members are selected by the Under Secretary of Defense for Policy with the approval of the Secretary of Defense. According to the DPBAC charter, "Membership will consist primarily of private sector individuals with distinguished backgrounds in national security affairs." Members of the DPBAC meet quarterly for 2 days, equating to a total service time of 8 days annually. Typically, the DPBAC meets with the Secretary of Defense at the end of the second meeting day to provide results of its deliberations. Members of the DPBAC are special Government employees (SGE), defined under 18 U.S.C. 202(a), as "an officer or employee . . . who is retained, designated, appointed, or employed" by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days.

Members of the DPBAC are provided a general information packet on pertinent ethical standards, which includes a brief summary of standards applicable to SGEs, at the time they are appointed. Additionally, a representative of the DoD Standards of Conduct Office provides a briefing once annually as part of a regularly scheduled DPBAC meeting.

Mr. Perle is a resident fellow at the American Enterprise Institute (AEI) for Public Policy Research. His expertise in the fields of foreign and defense studies include U.S. foreign policy, arms control, defense budget, national security, former Soviet Union, Europe, and the Middle East. Concurrent with his position at AEI, Mr. Perle is Chairman and Chief Executive Officer, Hollinger Digital, Inc., and a director of the Jerusalem Post. During the Reagan Administration, he served as the Assistant Secretary of Defense for International Security Policy, responsible for strategic nuclear weapons policy, trade and technology exports, and negotiations between the United States, its Western allies, and the Soviet Union. As assistant secretary, he testified more than 90 times before both the House and Senate with regard to administration policy on defense and security matters.

Mr. Perle has made numerous television appearances, including ABC's "Nightline" and "This Week"; CBS's "Face the Nation"; NBC's "Meet the Press" and "Today Show"; and PBS's "NewsHour." Mr. Perle's articles have been featured in U.S. News & World Report, New York Times, Washington Post, Washington Times, Wall Street Journal, Evening Standard (London), Times Literary Supplement, Jerusalem Post, as well as other papers in the United States and Europe. Mr. Perle holds a Masters degree in political science from Princeton University.

Mr. Perle has been a member of the DPBAC since in 1987, when he left his position as Assistant Secretary of Defense for International Security Policy, a position he held from 1981 through 1987. Mr. Perle's latest [REDACTED]

[REDACTED] b6

The Secretary of Defense designated Mr. Perle as Chairman, DPBAC, on July 2, 2001. In addition to coordinating topics for discussion at DPBAC meetings, Mr. Perle viewed the Chairman's primary responsibility as ensuring that the views of all the members of the Board were expressed fully in the Board's deliberations, both in and outside the presence of the Secretary of Defense. On March 26, 2003, Mr. Perle submitted his resignation as Chairman, DPBAC; however, he maintained his membership on the Board at the request of the Secretary of Defense.

Section 5021 of the Omnibus Trade and Competitiveness Act of 1988 amended Section 721 of the Defense Production Act of 1950 to provide authority to the President to suspend or prohibit any foreign acquisition, merger or takeover of a U.S. corporation that is determined to threaten the national security of the United States. The President can exercise this authority under section 721 (also known as the "Exon-Florio provision") to block a foreign acquisition of a U.S. corporation only if he finds there is credible evidence that the foreign entity exercising control might take action that threatens national security, and the provisions of law do not provide adequate and appropriate authority to protect the national security.

The Exon-Florio provision is implemented by the U.S. Committee for Foreign Investment in the United States (CFIUS), an inter-agency committee chaired by the Secretary of Treasury (DoD is a member of the committee). CFIUS seeks to serve U.S. policy through reviews that protect national security while: (1) maintaining the credibility of the U.S. open investment policy and (2) promoting the confidence of foreign investors in the U.S. and of U.S. investors abroad that they will not be subject to retaliatory discrimination.

Upon receiving notice of a proposed acquisition by a foreign investor, CFIUS conducts a 30-day review to determine whether the transaction presents national security considerations that warrant a full investigation. If the transaction poses no national security concerns, the acquisition is approved. If the acquisition does pose potential national security concerns, CFIUS conducts a 45-day investigation culminating in a recommendation to the President as to whether he should take action to block the acquisition. A representative of the Office of International Investment, Department of Treasury, who administers CFIUS matters, told us that DoD input is crucial on transactions that may have national security implications. The representative indicated that such transactions were unlikely to receive favorable action by CFIUS if DoD objected.

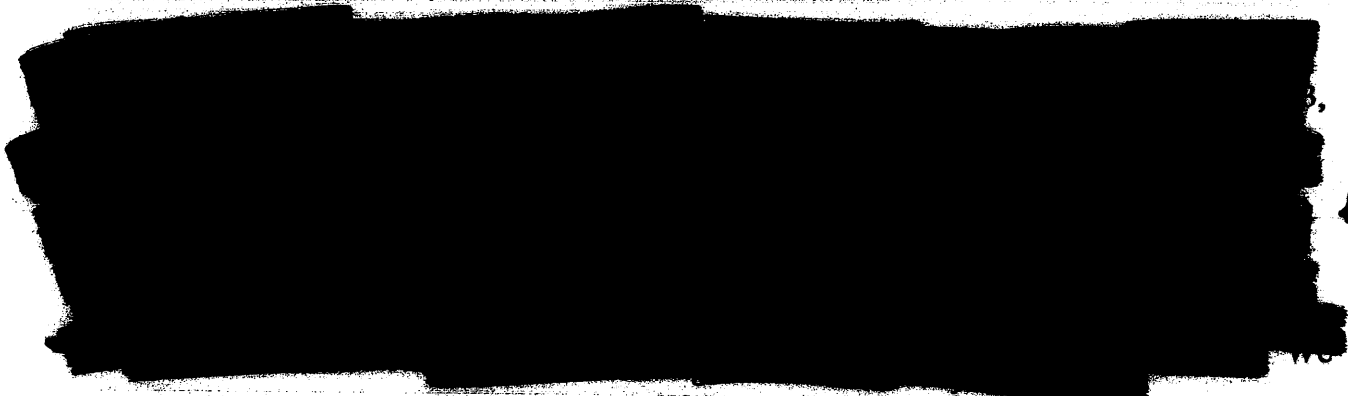
III. SCOPE

We interviewed Mr. Perle, six other DPBAC members, DoD representatives serving on CFIUS, DoD Standards of Conduct Office (SOCO) attorneys, senior officials of the U.S. Department of State, and a vice-president of Goldman, Sachs. In addition, we interviewed the Executive Director, DPBAC, and reviewed in detail the summary reports of all DPBAC

meetings between the times Mr. Perle was appointed chairman (September 2001) and February 2003.⁸ We also reviewed guidance from SOCO regarding standards of conduct for SGEs, applicable DoD policies and procedures, and other relevant documentation.


We received materials from Mr. Perle's attorney containing a sworn affidavit from one of the two Saudi Arabian businessmen who met with Mr. Perle on January 3, 2003, in Marseilles, France, and a transcript of a telephone conversation between Mr. Perle's attorney and the second Saudi Arabian businessman. The materials also included background information from Global Crossing attorneys detailing the process of developing and editing an affidavit that was to be used in support of Global Crossing's application to retain and employ Mr. Perle as a special regulatory advisor. In addition, we interviewed the attorney representing Global Crossing who communicated directly with Mr. Perle regarding Mr. Perle's potential employment with Global Crossing.

After initiating the inquiry, we received an e-mail complaint that stated, "I am reporting a serious case of corruption within the Department of Defense and requesting that you act expeditiously to discipline the individual [Mr. Perle] who is a war profiteer and has dishonored himself and the Department by accepting bribes and peddling his influence." Our assessment of that complaint determined that its concerns were similar to those expressed in previous correspondence to this Office. Although the e-mail offered assistance if we needed "further elucidation of this complaint," the complainant subsequently told us that he had "no independent information" regarding Mr. Perle, other than what he had read in the newspapers. We found insufficient basis to pursue the allegations as a separate matter.



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We also received correspondence that referenced a media report alleging "Mr. Perle has asked for payment to appear on TV to speak about the Administration's defense policy." The correspondence suggested that Mr. Perle's activities in that regard violated JER provisions regarding acceptance of compensation for "Teaching, speaking, and writing." After reviewing DoD ethics regulations in light of the media article referenced, we did not further investigate the matter. The media article indicated that Mr. Perle was compensated to give interviews on "the Pentagon's Iraq policy" and "[President] Bush's Middle East policy." It explained that he was "paid because of his working knowledge of Pentagon strategy."



The JER restrictions that apply to SGEs prohibit them from receiving compensation only for speaking on "particular matters involving specific parties in which the special Government employee has participated or is participating personally and substantially." The correspondence to this office, and the media article referenced, gave no indication that Mr. Perle spoke on "particular matters involving specific parties."⁹ Rather, the information provided to this Office indicated that he was interviewed on broad topics involving national defense. The JER permits DoD employees to receive compensation for speaking "on a subject within the employee's discipline or inherent area of expertise," even though that speaking activity "deals generally with a subject within the agency's areas of responsibility." (For additional discussion on this matter, see Section IV.E. below that addresses allegations involving Mr. Perle and Goldman-Sachs.)

IV. FINDINGS AND ANALYSIS

A. Did Mr. Perle's activities related to the bankruptcy of Global Crossing Ltd constitute a conflict of interest or misuse of position in violation of applicable standards?

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

⁹ Moreover, as described below, our review of DPBAC activities found no indication that Board deliberations ever involved "particular matters involving specific parties."

employee on behalf of Global Crossing, presumably using his authority and status as Chairman, DPBAC, to influence that employee to act favorably toward Global Crossing.

Standards Regarding a Conflict of Interest

Title 18, United States Code (U.S.C.), Section 203, "Compensation to Members of Congress, officers, and others in matters affecting the Government"

18 U.S.C. 203 prohibits an SGE:

- from directly or indirectly demanding, seeking, receiving, accepting or agreeing to receive or accept any compensation;
- for any representational services as agent or attorney;
- rendered or to be rendered either personally or by another;
- **before any department, agency, court, court-martial, officer, or any civil, military, or naval commission;**
- **only in relation to a particular matter involving a specific party or parties:**
 - a. in which the SGE participated at any time personally and substantially as a Government employee or SGE through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or
 - b. which is pending in the department or agency of the Government in which such employee is serving (if the employee has served the Government for more than 60 days during the immediately preceding period of 365 consecutive days).

Title 18, U.S.C., Section 205, "Activities of officers and employees in claims against and other matters affecting the Government"

18 U.S.C. 205 prohibits an SGE:

- from acting as an agent or attorney for prosecuting any claim against the United States; or receiving any gratuity, or any share of the interest in any such claim, in consideration of assistance in the prosecution of such claim; or
- from acting as an agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct or substantial interest;

- only in relation to a particular matter involving a specific party or parties:
 - a. which the SGE participated at any time personally and substantially as a Government employee or SGE through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise; or
 - b. which is pending in the department or agency of the Government in which such employee is serving (if the employee has served the Government for more than 60 days during the immediately preceding period of 365 consecutive days).

Title 18, U.S.C., Section 208(a), "Acts affecting a personal financial interest"

18 U.S.C. 208(a) prohibits an SGE:

- from participating personally and substantially as a Government officer or employee;
- through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise;
- in a judicial or other proceeding, application, request for a ruling, or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter;
- in which, to his knowledge he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

The Director of the Office of Government Ethics issued an additional regulatory waiver to the restrictions of 18 U.S.C. 208 applicable to SGEs serving on advisory committees. This waiver, found at Title 5, Code of Federal Regulations, Section 2640.203, provides that an SGE serving on an advisory committee within the meaning of the Federal Advisory Committee Act (FACA -- 5 U.S.C. Appendix 1) (such as the DPBAC) may participate in any particular matter of general applicability where the disqualifying financial interest arises from his non-Federal employment or non-Federal prospective employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as part of a class. For purposes of this paragraph, "disqualifying financial interest" arising from non-Federal employment does not include the interests of an SGE arising from the ownership of stock in his employer or prospective employer.

DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993

The "foreword" portion of the JER states that its provisions "are applicable to all DoD employees, regardless of civilian or military grade." Section 1-211 of the JER defines a "DoD Employee" as "Any DoD civilian officer or employee (including special Government employees) of any DoD Component." Subpart D of the JER, "Conflicting Financial Interests," provides guidance to DoD employees concerning the meaning of the statutes set forth above.

Section 2635.402 reiterates the criminal statute that prohibits an employee "from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest."

Section 2635.402(b)(1), defines "Direct and predictable effect," as when,

there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to the matter.

Further, Section 2635.402(b)(1)(ii) stipulates that the effect is predictable if there is a "real, as opposed to a speculative possibility that the matter will affect the financial interest." It also states that the magnitude of the gain or loss is immaterial and need not be known.

Section 2635.402(b)(3) defines "particular matters" to include "matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons." The definition explicitly excludes "the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons."

Section 2635.402(b)(4) defines "Personal and substantial," as,

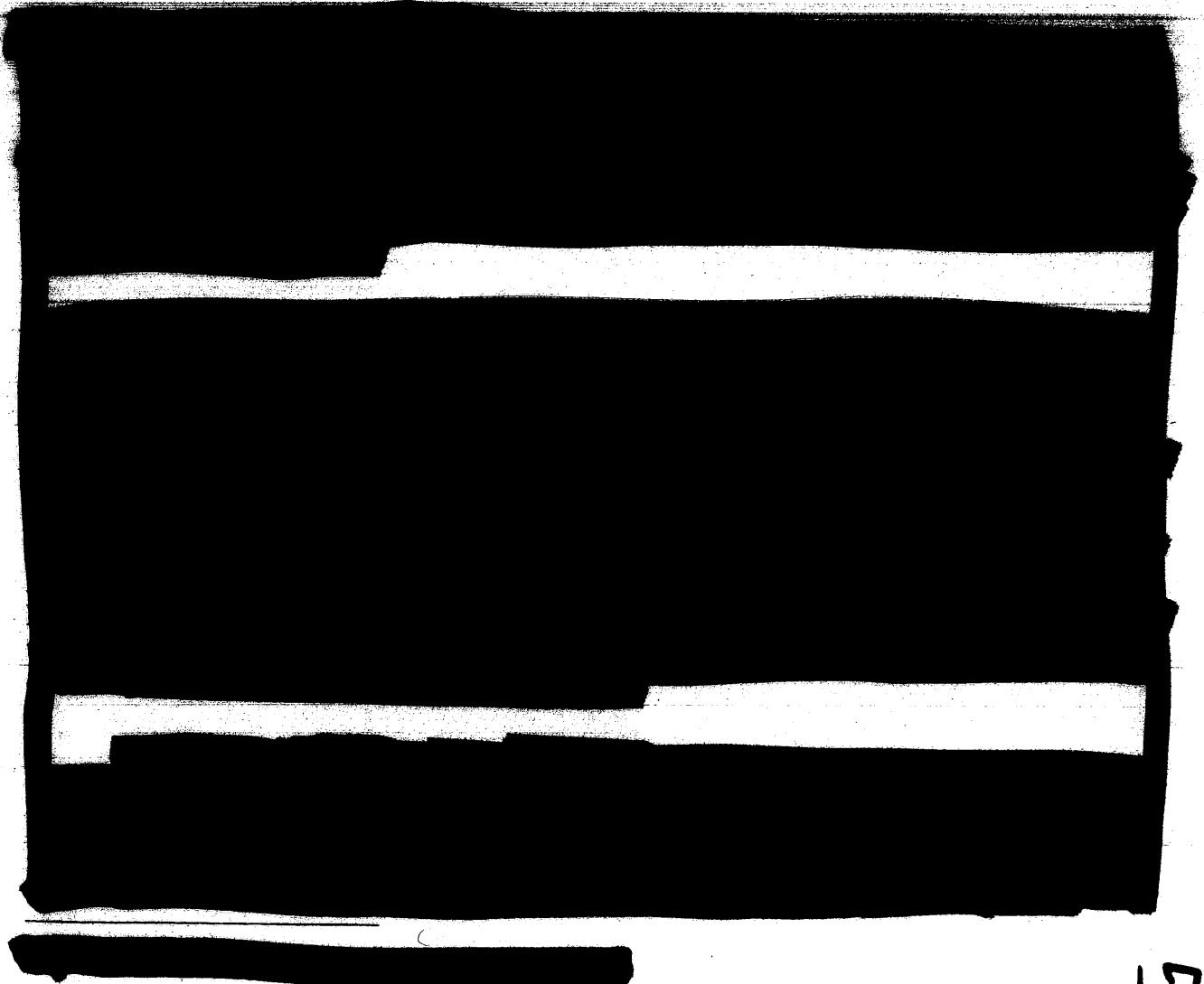
direct participation that is . . . of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. . . . Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

Standards Concerning Misuse of Position

DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993

Section 2635.101 of the JER, "Basic obligation of public service," states that employees shall not use public office for private gain. This obligation is further described in Section 2635, Subpart G of the JER, "Misuse of Position." Subpart G, Section 2635.702, "Use of public office for private gain," states,

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself, or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Facts Pertaining to an Alleged Conflict of Interest

[REDACTED]

[REDACTED]


[REDACTED]

Discussion -- Alleged Conflict of Interest

We concluded that Mr. Perle's activities



For these reasons, we concluded the provisions of 18 U.S.C. 203 did not apply in this case.



[REDACTED]

[REDACTED]

[REDACTED]

Facts Pertaining to an Alleged Misuse of Position

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Perle told us the Global Crossing lawyers subsequently provided him what he believed to be a revised draft of the affidavit; however, he added:

¹¹ The affidavit was entitled, "Affidavit of Richard Perle Pursuant to Section 327(a) of the Bankruptcy Code and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure in Support of the Debtors' Application to Retain and Employ Richard Perle as Special Regulatory Advisor."

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Discussion -- Misuse of Position

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. [REDACTED]

Standards

We refer to 18 U.S.C. 203 and 208, and JER Section 2635.402 described above.

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Facts

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

Discussion

Although Mr. Perle [REDACTED], we concluded that [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

C. [REDACTED]

Standards

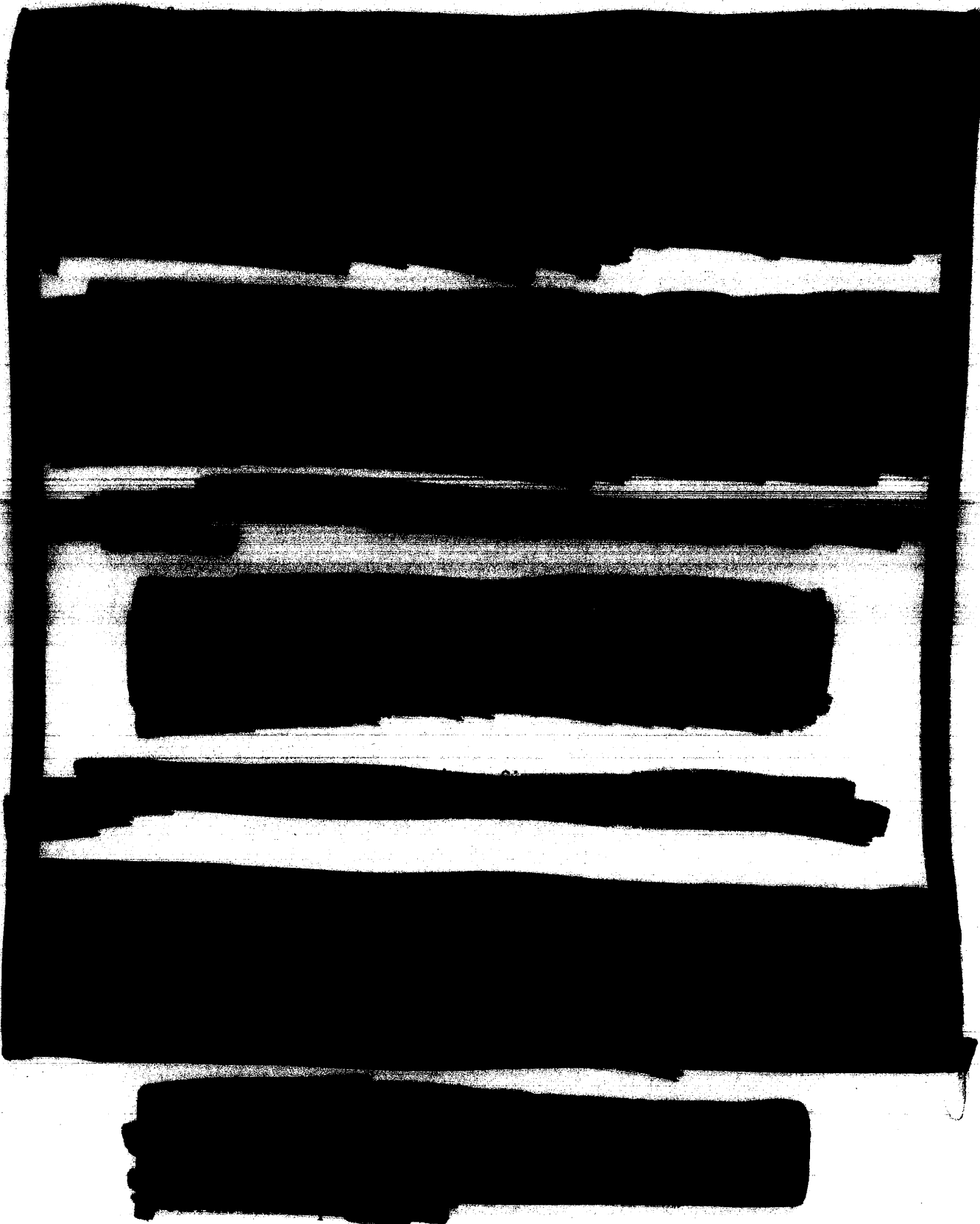
We refer to 18 U.S.C. 208, and JER Sections 2635.402 and 2635.702 described above.

Facts

[REDACTED]

Those complaints suggested the following violations of standards:

- [REDACTED]
- [REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

In conclusion, [REDACTED] asserted [REDACTED] had told The New Yorker that the January 3 meeting had involved no discussion of business or investment in Tireme. Additionally, he stated he had never spoken with [REDACTED] about the meeting. Finally, in the affidavit, [REDACTED] stated that [REDACTED] and Mr. Perle were the only three individuals present at the January 3 meeting.

[REDACTED]

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Discussion

The analysis of Mr. Perle's conduct *vis a vis* [REDACTED] is similar to the analysis set forth above on [REDACTED] y. Although Mr. Perle served as a [REDACTED], we concluded that [REDACTED]

[REDACTED]

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D. [REDACTED]

We refer to 18 U.S.C. 203, 205, and 208; and JER Sections 2635.402 and 2635.702 described above.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] testified that Mr. Perle [REDACTED]
[REDACTED]

Regarding the substance of the conversation, [REDACTED]

[REDACTED]

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[REDACTED]

Mr. Perle acknowledged he contacted [REDACTED] to inquire about the status of license requests by Loral to deliver satellites that had been manufactured for a Chinese customer. He called [REDACTED] because he had determined [REDACTED] was the decision-maker in the process. Mr. Perle denied identifying himself as a member of the DPBAC. He also denied that the contact constituted a conflict of interest because no issues involving or affecting Loral Space and Communications had been discussed by the DPBAC.

Discussion

As discussed in previous sections, we concluded that Mr. Perle [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We found no evidence Mr. Perle violated misuse of position provisions. Regarding Mr. Perle's contact with a State Department official, the evidence was clear Mr. Perle was acting as a representative of Loral Space and Communications and did not use his status as Chairman, DPBAC. Mr. Perle did not refer to his Government position during the conversation, nor did he attempt to use it to coerce or influence the State Department official's action.

E. Did Mr. Perle use nonpublic information or improperly accept compensation for speaking?

Standards

DoD 5500.7-R, "JER", dated August 30, 1993

Section 2635.703 of the JER provides that an employee shall not allow, through advice or recommendation, the improper use of nonpublic information to further the private interest of himself or others. Non-public information is defined as information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public.

Section 2635.807 provides that an employee, including an SGE, may not receive compensation from any source outside the Government for speaking that relates to the employee's official duties. For purposes of this paragraph, speaking relates to the employee's official duties if:

- The activity is undertaken as part of the employee's official duties.
- The invitation to engage in the activity was extended to the employee primarily because of his official duties rather than his expertise on the particular subject matter.
- The invitation to engage in the activity or the offer of compensation was extended to the employee by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties.
- The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information.
- For SGEs, the subject of the speaking activity deals in significant part with any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period. This restriction applies only during the current appointment of an SGE; except that if the SGE has not served or is not expected to serve for more than 60 days during the first year or any subsequent one year period of that appointment, the restriction applies only to "particular matters involving specific parties in which the SGE has participated or is participating personally and substantially."
- This section of the JER does not preclude an employee from receiving compensation for teaching, speaking, or writing on a subject within the employee's discipline, or inherent area of expertise based on his educational background or experience even though the teaching, speaking, or writing deals generally with a subject within the agency's responsibility.

Facts

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The [REDACTED] we interviewed had no personal knowledge of the Goldman, Sachs conference call other than what they had read in various news articles. The following

[REDACTED] g

[REDACTED]

[REDACTED]

After being introduced as a speaker on the conference call, Mr. Perle opened his remarks with a disclaimer statement:

Everything you're going to hear from me now represents my own view and my own best assessment of the situation. And obviously where in a few instances I have access to privileged information, I can't share that. But this is perhaps the best reported war in history before it actually got underway, and so a great deal is known and has been put in the public domain even before the fighting starts.

A detailed review of the summary reports of all DPBAC meetings taking place from Mr. Perle's appointment as Chairman (July 2001) through February 2003 revealed that discussion during DPBAC meetings did not cover particular matters involving specific parties pertaining to [REDACTED]

Discussion

[REDACTED]

[REDACTED]

[REDACTED]

We found no evidence of misconduct on the part of Mr. Perle in the matter and concluded that [REDACTED]

[REDACTED]

Standards

DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993

Section 2635.502(a) of the JER, "Consideration of appearances by the employee," provides guidance concerning situations where an employee's personal or business relationships could create the appearance of a loss of impartiality. It prohibits an employee from participating in a particular matter involving specific parties if the employee has a "covered relationship" with an involved party and the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality. If the employee does make such a determination, the JER permits the employee to participate in the matter only if he first informs his agency designee of the situation and receives authorization to participate.

An employee has a "covered relationship" with an entity (to include persons and organizations) for whom he has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.

Facts

We refer to the expositions of facts in prior sections of this report, augmented by the following observations of knowledgeable witnesses.

[REDACTED]

b7c

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

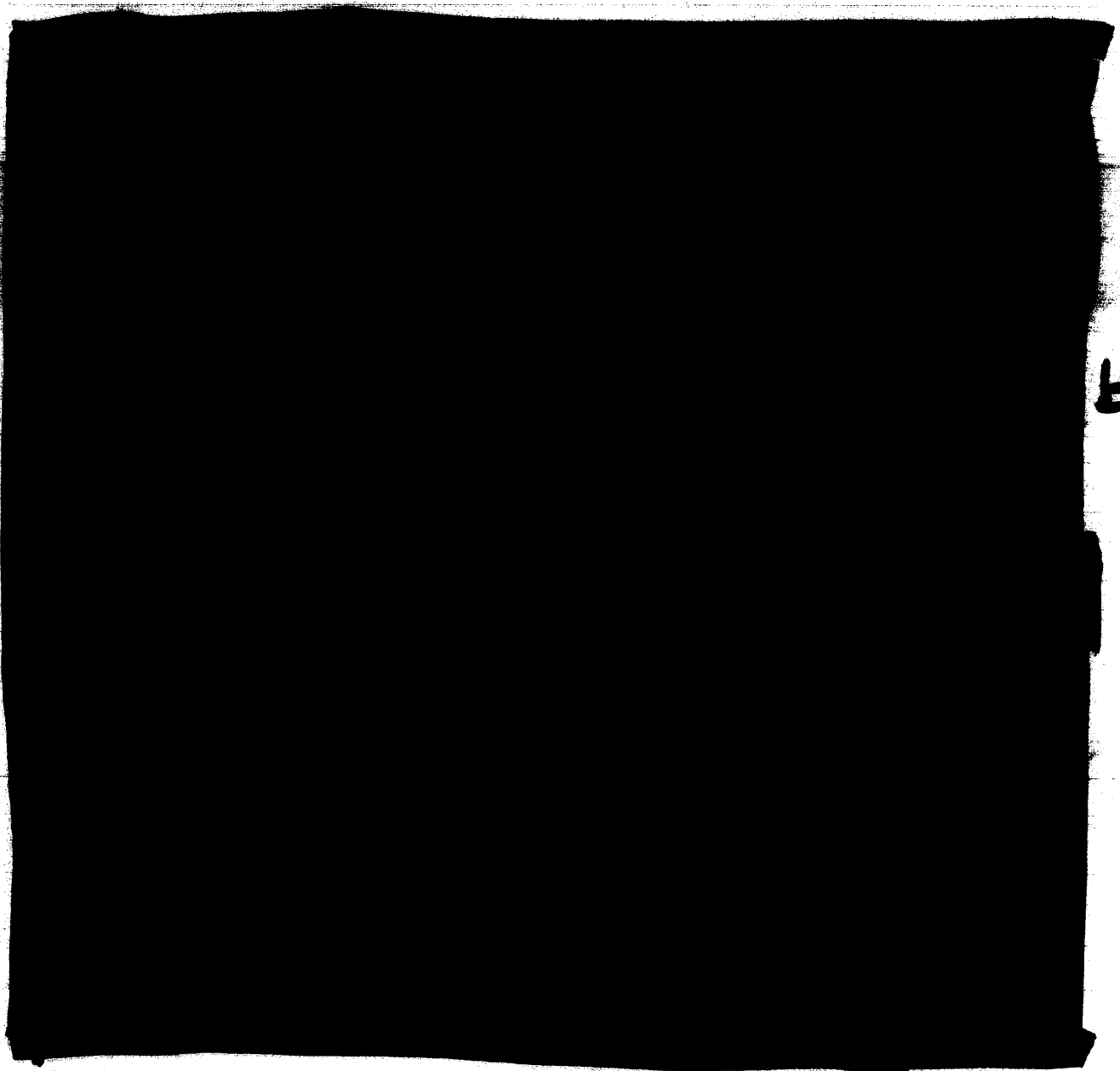
[REDACTED]

b7c

Mr. Perle pointed out:

There's a mechanism for making sure that the Government can get that advice without compromising the integrity of the Government, and that mechanism is that if you're on such a board and an issue comes before the board in which you have an interest, you don't involve yourself in a recommendation That seems to me the right way to reconcile the public interest in getting expertise from people outside and the protection of the public's interest in not having its policies and decisions skewed by private interests.

Discussion



b7c

In deciding whether Mr. Perle acted appropriately, we considered the purpose and nature of the DPBAC itself. As stated by several witnesses, the DPBAC was created and has been used by several administrations to provide the Secretary of Defense with advice on policy matters from knowledgeable persons outside DoD who are in a position to offer a "fresh perspective." Because persons with the requisite expertise on defense matters are likely to be former DoD officials or individuals with financial interests in defense industries, much of the DPBAC membership consists of persons with such backgrounds.

JER Section 2635.502(a) requires the Government employee in question to make an assessment as to whether his actions would cause a reasonable person with knowledge of the facts to conclude that he (the employee) had lost impartiality in the performance of his official duties. Here, Mr. Perle made such an assessment, concluding that financial interests he held while performing official functions did not constitute a conflict of interests. We determined that his conclusions were correct in that a reasonable person with knowledge of the purposes of an advisory board such as the DPBAC, the subject matter of DPBAC deliberations, and standards that apply to SGEs would agree with Mr. Perle that there was no conflict and no loss of impartiality, either real or apparent.

V. CONCLUSIONS

A. Mr. Perle's activities related to [REDACTED]

B. Mr. Perle's activities related to [REDACTED]

C. Mr. Perle's activities related to [REDACTED]

D. Mr. Perle did not violate [REDACTED]

E. Mr. Perle's activities relating to [REDACTED]

F. Mr. Perle did not [REDACTED]

VI. RECOMMENDATIONS

We have no recommendations in the matter.